

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

RECEIVED  
JAN 21 1999  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of  
Federal-State Joint Board on  
Universal Service

)  
)  
)  
)

CC Docket No. 96-45

To: The Commission

**COMMENTS OF MACTEL, INC.  
REGARDING FURTHER NOTICE OF PROPOSED RULEMAKING**

MACTel, Inc. ("MACTel") provides cellular telephone service in Anchorage and Fairbanks, Alaska. MACTel's service area also includes the Kenai peninsula (a rural area south of Anchorage) and rural areas near Fairbanks, including Barrows, Alaska, the most northern point on the United States. The geographic areas served by wireless carriers in Alaska are truly unique – not simply in terms of weather and terrain, but also in providing service to vast, sparsely populated areas. Moreover, MACTel's service area is not only wholly intrastate, but the next closest state is a few thousand miles away.

These unique features result in unique traffic patterns for wireless services in Alaska. For wireless carriers operating in Alaska, their percentage of traffic that is interstate is probably lower than that of carriers operating in any other part of the United States. Requiring wireless carriers in Alaska to report 15 percent of their revenues as interstate on the Universal Service Worksheet would grossly overstate their interstate revenues. Using this inflated percentage to calculate universal service contributions for Alaskan carriers: (1) would be arbitrary and capricious; (2) may increase rates for wireless services; and (3) would be anticompetitive. Accordingly, MACTel submits these comments in response to the Commission's *Further Notice*

No. of Copies rec'd  
List ABCDE

014

*of Proposed Rulemaking*<sup>1</sup> in the above-captioned proceeding to urge the Commission to continue to allow cellular and PCS providers to estimate their percentage of interstate revenues on an individual basis.

**A. Requiring All Cellular and PCS Carriers To Report 15 Percent Of Their Revenues As Interstate Is Unreasonable.**

The Commission's Universal Service Worksheet requires carriers to list the percentage of each revenue category that represents interstate and international revenues. Many wireless carriers cannot derive the jurisdictional nature of their revenues directly from their books of account. Accordingly, the Commission has allowed such carriers to provide good faith estimates of their interstate revenues. In this rulemaking proceeding, the Commission seeks comment on methods designed to simplify universal service reporting requirements for wireless carriers. However, the Commission's proposal to require that all wireless carriers report 15 percent of their revenues as interstate creates more problems than it solves, particularly for smaller wireless carriers operating in rural and insular areas.

As the Commission correctly notes, different parts of the country experience different levels of interstate traffic. Wireless carriers operating in the northeast, for example, where major metropolitan areas cover several states, are going to have significantly greater levels of interstate traffic than carriers operating in Alaska, where each carrier's service area is wholly intrastate and the next closest state is 3000 miles away. There is no sound basis for requiring carriers operating in Alaska and other rural and insular areas to report 15 percent of their revenues as interstate when the actual figure is far less than 15 percent. A preference for simplified reporting requirements does not justify imposing inaccurate reporting requirements.

---

<sup>1</sup> Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, FCC 98-278 (October 26, 1998).

Moreover, as the Commission noted, it may be "reasonably simple for most wireless carriers to conduct traffic studies and extrapolate from the data the percentage of their revenues that should be attributed to the interstate jurisdiction."<sup>2</sup> The goal of this proceeding should be to determine a methodology for *accurately* estimating the amount of wireless revenues that should be classified as interstate, not simply a methodology that is easy to apply. There can be no rational basis for mandating that carriers report an inaccurate percentage of interstate revenues when a reasonably accurate percentage can be established. Accordingly, requiring all cellular and PCS carriers to report 15 percent of their revenues as interstate, when that figure is clearly inaccurate for some carriers, would be arbitrary and capricious.<sup>3</sup>

If the Commission chooses to establish a fixed percentage for all cellular and PCS carriers, wireless carriers must be given the option of using their own data-collection procedures to demonstrate to the Commission the percentage of their wireless telecommunications revenues derived from interstate calls. Such carriers should not be required to obtain a waiver prior to using their own methodology for establishing their percentage of interstate revenues. Most of the carriers whose percentage of interstate revenues will fall below a Commission-established percentage will be small carriers operating in rural or insular areas. Many of these carriers operate in high-cost areas and should not be required to incur additional expenses associated with obtaining a waiver so that they may *accurately* report their percentage of revenues attributable to interstate traffic.

---

<sup>2</sup> *Further Notice of Proposed Rulemaking* at ¶ 23.

<sup>3</sup> *Bowen v. American Hosp. Ass'n*, 476 U.S. 610, 626 (1986) (noting that an "agency's explanation of the basis for its decision must include a 'rational connection between the fact found and the choice made'")(quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).

**B. Requiring All Cellular and PCS Carriers To Use A Fixed Percentage For Reporting Their Interstate Revenues Will Increase Costs In Certain Service Areas and May Raise Anticompetitive Concerns.**

As noted above, the Commission has recognized that different parts of the country experience different levels of interstate, wireless traffic. Accordingly, requiring all cellular and PCS carriers to use the same fixed percentage to report their interstate revenues will overestimate the percentage of interstate revenues in some areas and underestimate the percentage of interstate revenues in other areas. Carriers whose interstate revenues likely will be overestimated are carriers that provide service in rural or insular areas. The overestimates will increase these carriers' universal service obligations, which may ultimately result in increased rates for customers. In other words, the Commission's proposal may well increase rates for wireless service in the very areas of the country that require high-cost assistance. In some of these rural areas, wireless services may be the only type of telephone service available. In Alaska, wireless services are used extensively, with approximately 35 to 40 percent of the population in Anchorage and Fairbanks subscribing to wireless services. This extremely high penetration rate is likely due, in part, to the rural geography of Alaska.

Requiring all cellular and PCS carriers to use the same fixed percentage to report interstate revenues also conflicts with the Commission's competitive neutrality goals.<sup>4</sup> For a large carrier that provides service through the United States, using a fixed percentage for reporting interstate revenues may not significantly change that company's overall universal service obligation. Its universal service obligation for some of its service areas would likely increase while its contributions for other areas would likely decrease. In those service areas where its universal service contribution increased, a national carrier may be able to avoid passing

---

<sup>4</sup> See *Further Notice of Proposed Rulemaking*, ¶ 42-43.

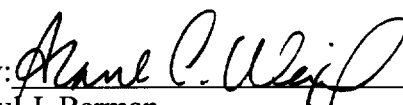
the full increase onto its customers because of reduced contributions for other areas. This could place a smaller carrier with a limited service area at a competitive disadvantage vis-à-vis a national carrier. The smaller carrier would not be able to offset its increased universal service payments with decreased payments for other areas, and either would have to absorb its increased contributions or risk losing customers by passing them on.

### **Conclusion**

In proposing to require that all cellular and PCS carriers report a fixed percentage (*e.g.*, 15 percent) of their revenues as interstate when computing their universal service contributions, the Commission appears to have lost sight of smaller carriers that operate in rural and insular areas and whose service areas are wholly intrastate. Such carriers are likely to have interstate revenues that fall well below the national average. The Commission must allow such carriers to report their percentage of interstate revenues on an individual basis.

Respectfully submitted,

MACtel, Inc.

By: 

Paul J. Berman

Alane C. Weixel

COVINGTON & BURLING

1201 Pennsylvania Avenue, N.W.

P.O. Box 7566

Washington, D.C. 20044

(202) 662-6000

*Its Attorneys*

January 11, 1999